IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 172 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALI MAHMED ABDUL

Versus

STATE OF GUJARAT

Appearance:

THROUGH JAIL for Petitioner

MR RC KODEKAR APP for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/03/2001

ORAL JUDGEMENT

#. Rule. Mr.R.C.Kodekar, learned APP waives service of the Rule on behalf of respondents.

#. Heard learned counsel for the respondents and perused the petition. I have also gone through the judgment of the Additional Sessions Judge, Gondal and I am constrained to observe that the learned Additional Sessions Judge, Gondal is not correct in his approach.

The judgment of the Hon'ble Supreme Court is binding on all the courts of this country. Reference may have to Article 141 of the Constitution of India, which reads as under:-

> 141. Law declared by Supreme Court to be binding on all courts.- The law declared by the Supreme court shall be binding on all courts within the territory of India."

#. The learned Additional Sessions Judge is not correct to distinguish this decision of the Hon'ble Supreme Court. The copy of the judgment of the Hon'ble Supreme Court in the case of Shahada Khatoon and Ors. Vs. Amjad Ali and Ors., 2000(1) Crimes 12(SC) is there on the record and therein Hon'ble Supreme Court held that the language of sub-section (3) of Section 125 is quite clear and circumscribe the power of the Magistrate to impose imprisonment for a term which may extend to one month or until the payment, if sooner made. This power of the Magistrate cannot be enlarged and therefore the only remedy would be after expiry of one month for breach or noncompliance with the order of the Magistrate the wife can approach the Magistrate again for similar relief. The court further held that by no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month.

#. In this case, the learned Magistrate sentenced the petitioner for noncompliance of the order passed by him under Section 125 of the Criminal Procedure Code for a period exceeding one month i.e. 9 months. The judgment of the Judicial Magistrate is of 14.11.1999 and the petitioner has already undergone sentence for 1 month. It is a case of grant of maintenance to the wife and minor son and otherwise also, keeping the husband behind the bars for a period exceeding one month is not in the interest of those persons in whose favour the order of maintenance is made. Naturally, longer the period of imprisonment for noncompliance of the order of maintenance will create more inconveniences, difficulties and hardships to the persons in whose favour the order of maintenance is passed. While in the jail the husband cannot earn anything and it cannot be expected from him to make the payment of maintenance to the wife and minor son. The very object and purpose of the Act will be frustrated, in case, where for noncompliance of the order of the Magistrate, there under maintenance is granted in favour of wife and child if the husband is kept behind bars for a long period. The provisions of the benevolent

section has to be interpreted and given effect to advance the justice and not to cause prejudice to the beneficiaries of the order of the court. The petitioner has already undergone imprisonment for a term exceeding one month. This matter is squarely covered by the decision of the Hon'ble Supreme Court of India in the case of Shahada Khatoon and Ors. Vs. Amjad Ali and Ors. (supra).

In the result, the Special Criminal Application succeeds and the same is allowed. The petitioner is to be set at liberty forthwith by the jail authorities, if he is not required in any other case. Rule is made absolute accordingly. No order as to costs.

(S.K.Keshote, J.)
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